

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

BOARD OF TRUSTEES SHEET METAL WORKERS' NATIONAL PENSION FUND, <i>et al.</i>,)	
)	
)	
Plaintiffs,)	Case No. 1:22-cv-1294-PTG-WEF
)	
v.)	
)	
NEW YORK CHUTES, LLC,)	
)	
Defendant.)	
)	

SECOND DECLARATION OF JAMES FOX


I, James Fox, under penalty of perjury, do hereby declare and say:

1. I am an adult and competent to make this declaration. I have personal knowledge of all facts set forth in this Declaration.
2. As I noted in my initial declaration, NY Chutes has primarily engaged in work that is not covered by the union contract.
3. Contrary to this reality, Plaintiffs initially took the position in the matter, that all of NY Chutes' work was covered by the union contract. Plaintiffs have since agreed that most of the employees' work for NY Chutes was not covered by the union contract.
4. In 2020, because of a reduction in revenue, NY Chutes could not afford to have dedicated employees. Instead, NY Chutes used independent contractors for the limited work it preformed.
5. None of the work performed in 2020 by NY Chutes was covered by the union contract.
6. None of the work performed in 2020 by NY Chutes' independent contractors is covered by the "No Subcontracting Clause" in the union contract.
7. None of the independent contractors that NY Chutes contracted with were members of the union.
8. However, based on Plaintiffs' most recent filing, it appears that Plaintiffs continue to assert that NY Chutes' use of independent contractors in 2020 somehow subjected it to a contribution requirement. This is not accurate.

9. Plaintiffs and their auditors have failed to explain the basis for their assertions related to the independent contractors.

I declare under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge information and belief.

Executed this 20th day of December 2023.


James Fox